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13 Cross-Defendant CHURCH OF
14 SCIENTOLOGY INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF MARIN

17 CHURCH OF SCIENTOLOGY)
18 INTERNATIONAL, a California not-)
19 for-profit religious corporation;)

20 Plaintiffs,)

21 vs.)

22 GERALD ARMSTRONG; MICHAEL WALTON;)
23 et al.,)

24 Defendants.)

25 _____)
26 GERALD ARMSTRONG,)

27 Cross-Complainant,)

28 vs.)

29 CHURCH OF SCIENTOLOGY)
30 INTERNATIONAL, a California)
31 Corporation; DAVID MISCAVIGE;)
32 DOES 1 to 100;)

33 Cross-Defendants.)

CASE NO. 157 680

CHURCH OF SCIENTOLOGY
INTERNATIONAL'S SEPARATE
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION, AS TO
GERALD ARMSTRONG'S SECOND
AMENDED CROSS-COMPLAINT

[C.C.P. 437c]

DATE: September 9, 1994
TIME: 9:00 a.m.
DEPT: 1

DISCOVERY CUT-OFF: Aug. 30,
1994
MOTION CUT-OFF: Sept. 13,
1994
TRIAL DATE: Sept. 29, 1994

1 Plaintiff and cross-defendant Church of Scientology
2 International ("the Church") submits this separate statement of
3 undisputed facts in support of its motion for summary judgment,
4 or, in the alternative, summary adjudication of issues as to
5 defendant and cross-complainant Gerald Armstrong's Second Amended
6 Cross-complaint, as modified by this Court's Order of June 17,
7 1994, pursuant to Code of Civil Procedure Section 437c.

8 Pursuant to the June 17, 1994 Order, two claims remain
9 against the Church for abuse of process. The Church seeks
10 summary judgment in its favor as to the entire cross-complaint,
11 or, in the alternative, summary adjudication independently as to
12 each of the abuse of process claims.

13 All references to supporting evidence are made to Evidence
14 In Support of Church of Scientology International's Motion for
15 Summary Judgment ("Evidence") or Request for Judicial Notice in
16 Support of Church of Scientology International's Motion for
17 Summary Judgment ("Request for Judicial Notice").

18 **ISSUE NUMBER 1:** The Church is entitled to judgment on
19 Armstrong's first claim for abuse of process because the filing
20 of the declaration of David Miscavige in the case of Church of
21 Scientology International v. Steven Fishman et al., United States
22 District Court for the Central District of California, Case No.
23 91-6426 HLH(Tx) (the "Fishman case") was privileged as a matter
24 of law pursuant to Civil Code Section 47(b).

25 **UNDISPUTED STATEMENT**

26 1. Gerald Armstrong
27 filed a Second Amended Cross-
28 complaint in this action on

EVIDENCE

1. Request for Judicial
Notice, Exhibit A, Second
Amended Cross-Complaint.

1 April 15, 1994.

2

3 2. On June 17, 1994,
4 this Court issued an Order
5 which modified the Second
6 Amended Cross-Complaint as
7 follows:

8 a. Paragraphs 9 - 54,
9 59, 60-62, 64-68, 70-72 and 74
10 were stricken in their
11 entirety;

12 b. All of paragraph 69,
13 except the allegation that the
14 Church had "file[d] a false
15 declaration in a federal
16 district court action," was
17 stricken; and

18 c. All of paragraph 73,
19 except for the allegation that
20 the Church had "use[d] the
21 discovery process [in this
22 action] to obtain information
23 for improper purposes," was
24 stricken.

25

26 3. In paragraph 69, of
27 the Second Amended Cross-
28 Complaint Armstrong alleges

2. Request for Judicial
Notice, Exhibit A, Second
Amended Cross-complaint,
passim; Request for Judicial
Notice, Exhibit B, Minute
Order of June 17, 1994.

3. Request for Judicial
Notice, Exhibit A, Second
Amended Cross-Complaint, ¶69.

1 that, on February 8, 1994, the
2 Church filed a declaration of
3 David Miscavige in the Fishman
4 case which "falsely accuses
5 Armstrong of various acts
6 relating to his experiences
7 with Scientology prior to the
8 1986 settlement."

9
10 4. Gerald Armstrong was
11 named in the Fishman case by
12 defendants Steven Fishman and
13 Uwe Geertz as a witness and/or
14 an expert witness, at least
15 six times, beginning on August
16 26, 1992.

4. Evidence, Exhibit 1,
Declaration of Timothy Bowles;
Exhibit 1(A), Defendants List
of Proposed Witnesses; Exhibit
1(B), Second Supplemental and
Amended List of Witnesses to
Be Called by Defendant, Uwe
Geertz, Ph.D, p. 2; Exhibit
1(C), Amended and Supplemental
List of Witnesses Who May Be
Called at Trial by Defendant,
Uwe Geertz, Ph.D, p. 2;
Exhibit 1(D), List of
Witnesses Who May be Called at
Trial by Defendant, Uwe
Geertz, Ph.D, p. 2; Exhibit
1(E), Second Amended List of
Witnesses Who May Be Called at
Trial by Defendant, Uwe

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5. On December 7, 1993, counsel for Geertz filed and served narrative statements regarding the expected testimony of expert witnesses. The first witness so listed is Gerald Armstrong. The narrative stated, inter alia, that Armstrong had agreed to testify extensively and negatively about the Church, including claims of,

"[H]is knowledge of L. Ron Hubbard and his successors, of Scientology and its organizations, corporate and hierochial (sic) structure, beliefs, practices, methods, personnel, conduct, behavior, hierarchy, lexicon, activities, financing, financial activities, financial misdealings, setups, dead agent files, suicides, attempted

Geertz, Ph.D., p. 2; Exhibit 1(F), Third Amended List of Witnesses Who May Be Called at Trial by Defendant, Uwe Geertz, Ph.D., p. 2.

5. Evidence, Exhibit 1, Declaration of Timothy Bowles, Exhibit 1(G), Defendant Uwe Geertz, Ph.D.'s Brief Narrative Statements Regarding Expected Testimony of Expert Witnesses, pp. 2-3.

1 suicides, history,
2 criminal and/or
3 alleged criminal
4 conduct, the
5 destruction of
6 documents/evidence
7 by Scientology,
8 dealings with the
9 public, dealings
10 with former members,
11 dealings with the
12 press, dealings with
13 the judicial system,
14 dealings with
15 psychiatry and
16 psychology
17 professionals,
18 coercive methods,
19 threats and
20 directives to kill
21 or murder people,
22 the "fair game"
23 doctrine, litigation
24 conduct and other
25 related or similar
26 matters."

15 6. On October 26, 1993,
16 defendant Geertz also filed
17 and served a declaration of
18 Vaughn Young, another witness
19 Geertz had designated as an
20 expert witness. In the
21 declaration, Young asserted
22 that Mr. David Miscavige had,
23 in 1981, ordered him to "get
24 Armstrong" by preparing a
25 "reward" poster characterizing
26 Armstrong as a criminal. In
27 support of his declaration,
28

6. Evidence, Exhibit 1,
Declaration of Timothy Bowles,
Exhibit 1(H), Declaration of
Vaughn Young, pp. 26-27, ¶¶
51-52, and Exhibit N thereto.

1 Young cited the decision of
2 the trial court in the case of
3 Church of Scientology of
4 California v. Armstrong, LASC
5 No. C420153.

7 7. Non-party David
8 Miscavige was also listed by
9 defendants Fishman and Geertz
10 as an expected trial witness
11 at least seven times.

7. Evidence, Exhibit 1,
Declaration of Timothy Bowles,
Exhibit 1(I), Defendant
Geertz's List of Witnesses
Pursuant to Local Rule 6.1.4,
p. 1; Exhibit 1(A),
Defendant's List of Proposed
Witnesses, p. 2; Exhibit 1(B),
Second Supplemental and
Amended List of Witnesses to
Be Called by Defendant, Uwe
Geertz, Ph.D, p. 8; Exhibit
1(C), Amended and Supplemental
List of Witnesses Who May Be
Called at Trial by Defendant,
Uwe Geertz, Ph.D., p. 9;
Exhibit 1(D), List of
Witnesses Who May Be Called at
Trial by Defendant, Uwe
Geertz, Ph.D., p. 7; Exhibit
1(E), Second Amended List of
Witnesses Who May Be Called at

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Trial by Defendant, Uwe Geertz, Ph.D., pp. 6-7; and Exhibit 1(F), Third Amended List of Witnesses Who May Be Called at Trial by Defendant, Uwe Geertz, Ph.D., p. 7.

8. On February 8, 1994, Mr. Miscavige filed a declaration in the Fishman case. Armstrong is mentioned in only one paragraph in the Miscavige declaration: paragraph 54, which consists of testimony of Mr. Miscavige which refutes the testimony of Young, and the decision which Young had attached to his declaration.

8. Evidence, Exhibit 1, Declaration of Timothy Bowles, Exhibit 1(J), Declaration of David Miscavige of February 8, 1994, pp. 31-32.

ISSUE NUMBER 2: The Church is entitled to judgment on Armstrong's second claim for abuse of process because the facts are undisputed that the Church has not used the processes of the court for an ulterior purpose.

9. Undisputed Facts Nos. 1-2 are incorporated herein by reference.

12. The evidence supporting undisputed Facts 1 and 2 is incorporated herein

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10. Plaintiff's complaint in this action alleges that in 1990, Armstrong fraudulently conveyed his assets, including large amounts of property and cash, to Michael Walton, the Gerald Armstrong Corporation, and others.

11. Armstrong has admitted that he "gave away" large amounts of property and cash, as alleged in the complaint.

12. The Church claims in its Complaint that Armstrong gave away his property so as

by reference.

10. Request for Judicial Notice, Exhibit C, Complaint, pp. 2-3, 7-11, ¶¶ 2, 26-39.

11. Evidence, Exhibit 2, Declaration of Laurie J. Bartilson, Exhibit 2(A), Deposition of Gerald Armstrong, July 22, 1992, pp. 267:16-269:17; Exhibit 2(B), Deposition of Gerald Armstrong, March 10, 1993, 545:4-23; Exhibit 2(C), Deposition of Gerald Armstrong, March 17, 1994, pp. 79:2-87:19.

12. Request for Judicial Notice, Ex. C, Complaint, ¶¶ 12, 29, 30.

1 to be "judgment proof" when he
2 began breaching a settlement
3 agreement which Armstrong made
4 with the Church in 1986.

5
6 13. Armstrong received
7 approximately \$800,000 from
8 the Church in 1986 in
9 settlement of his claims.

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12 14. In this action, the
13 Church has propounded two sets
14 of requests for the production
15 of documents to Armstrong. In
16 those combined sets, only
17 seven requests sought personal
18 financial record information.

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21 15. Armstrong objected
22 to all of the Church's
23 requests for production of
24 documents, including those for
25 financial records, requiring
26 the Church to make a motion to
27 compel production.

13. Evidence, Exhibit 2,
Declaration of Laurie J.
Bartilson; Exhibit 2(D),
Declaration of Graham Berry;
and Exhibit D thereto, p. 3.

14. Evidence, Exhibit 2,
Declaration of Laurie J.
Bartilson, Exhibit 2(E),
Request for Production, Set
No. 1, Aug. 9, 1993, p. 3;
Exhibit 2(F), Request for
Production, Set No. 2, Sept.
16, 1993, pp. 6-7.

15. Evidence, Exhibit 2,
Declaration of Laurie J.
Bartilson; Exhibit 2(G),
Gerald Armstrong's Responses
to Plaintiff's First Request
for Production of Documents,
pp. 1-2; Exhibit 2(H), Gerald
Armstrong's Responses to

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Plaintiff's Second Request for Production of Documents, pp. 4-6. Exhibit 2(I), Notice of Motion and Motion to Compel Production of Documents from Defendant Gerald Armstrong; Exhibit 2(J), Memorandum of Points and Authorities in Support of Motion to Compel Production of Documents from Defendant Gerald Armstrong.

16. The Church's motion to compel was denied in part and granted in part by the referee, Mr. Benz, who found that the relevancy of most of the requested records outweighed Armstrong's privacy claims. The Report was adopted by the Court.

16. Evidence, Exhibit 2, Declaration of Laurie J. Bartilson; Exhibit 2(K), Report and Recommendation of the Referee of Feb. 10, 1994, pp. 2, 4.

17. The documents provided by Armstrong to the Church pursuant to these requests have been used by the Church and its counsel to prepare for trial in this

23. Evidence, Exhibit 3, Declaration of Lynn R. Farny in support of Church of Scientology International's Motion for Summary Judgment; Exhibit 4, Declaration of

1 action, and have been used for
2 no other purpose.

Laurie J. Bartilson in support
of Church of Scientology
International's Motion for
Summary Judgment.

5
6 DATED: July 22, 1994

Respectfully submitted,
BOWLES & MOXON

8
9 By: 

Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

12 Attorneys for Plaintiff and
13 Cross-Defendant
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On July 25, 1994, I served the foregoing document described as CHURCH OF SCIENOTOLOGY INTERNATIONAL'S SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION, AS TO GERALD ARMSTRONG'S SECOND AMENDED CROSS-COMPLAINT on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE **FEDERAL EXPRESS**
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on July 25, 1994, at Los Angeles, California.

**** (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

****** Such envelopes were hand delivered by Messenger Service

Executed on _____, at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)